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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 554

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO, a labor organization, et al., *Petitioners*,

v.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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TABLE OF CONTENTS

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Statutes involved	4
Statement	4
Reasons for granting this writ	9
1. This Court should review a construction of the Labor-Management Reporting and Disclosure Act which excludes arbitrary removal of a union officer from its provisions	9
2. The construction of the word member in Section 101(a)(5) as not including an officer conflicts with the holding of the Ninth Circuit in *Grand Lodge, I.A.M.* v. *King,* petition for certiorari pending, No. 456, this term	16
3. The pendent jurisdiction issue presented typifies a state of uncertainty and confusion among the circuits which should be clarified by this Court	18
Conclusion	24
Appendix A—Judgment of the United States Court of Appeals for the Seventh Circuit	1a
Appendix B—Opinion of the United States Court of Appeals for the Seventh Circuit	1a
Appendix C—Statutes involved	8a

AUTHORITIES CITED

CASES:

Addison v. Grand Lodge, 9th Cir., 1963, 318 F. 2d 504	21
Cromwell v. Hillsborough Township, 3d Cir., 1945, 149 F. 2d 617	20
DeStefano v. Papa, 37 N.Y.S. 2d 950, App. dismd. App. Div. 919, 39 N.Y.S. 2d 413, reh. den. 265 App. Div. 991, 39 N.Y.S. 2d 987	24

Page

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Grand Lodge, I.A.M. v. King, petition for certiorari pending, No. 456, this term 16
Hazel Bishop, Inc. v. Perfemme, Inc., 2d Cir., 1963, 314 F. 2d 399 20
Hurn v. Oursler, 289 U.S. 238 (1933) 20, 22
King v. Grand Lodge, I.A.M., N.D. Calif. S.D. 1963, 215 F. Supp. 351, petition for certiorari pending, No. 456, this term 14, 16
Mansoky v. Bethlehem-Hingman Shipyard, Inc., 1st Cir., 1949, 177 F. 2d 529 20
O'Brien v. Matual, 14 Ill. App. 2d 173, 144 N.E. 2d 446 23
Rumbaugh v. Winefrede R.R. Co., 4th Cir., 1964, 331 F. 2d 530 21
Ryan v. Cudahy, 15 Ill. 108, 41 N.E. 760 23
Salzhandler v. Caputo, 2d Cir., 1963, 316 F. 2d 445 19
Sheridan v. Brotherhood of Carpenters, 3d Cir., 1962, 306 F. 2d 152 19
Strachman v. Palmer, 1st Cir., 1949, 177 F. 2d 427 20
U.M.W.A. v. Meadowbrook Coal Co., 6th Cir., 1959, 263 F. 2d 52, certiorari denied, 359 U.S. 1013 21
U.M.W.A. v. Osborne Mining Co., 6th Cir., 1960, 279 F. 2d 716, certiorari denied, 364 U.S. 881 21
Werner v. I.A.M., 11 Ill. App. 2d 258, 137 N.E. 2d 100 23
White Oak Coal Co. v. U.M.W.A., 6th Cir., 1963, 218 F. 2d 591, certiorari denied, 275 U.S. 966 21

STATUTES:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. Supp. 401, *et seq.*

Sec. 3(h) 8a
Sec. 101(a)(1) 3, 15, 17, 19, 21, 9a
Sec. 101(a)(2) 17, 19, 21
Sec. 101(a)(4) 17, 19, 21
Sec. 101(a)(5) 2, 4, 8, 9, 15, 16, 17, 9a
Sec. 101(b) 9a
Sec. 102 .....7, 15, 9a

Page

Sec. 302 .....3, 4, 7
Sec. 304(a) 3, 4, 7, 10a
Sec. 304(b) 3, 4, 7, 11a
Sec. 304(c) 11a
Sec. 401(b) 12a
Sec. 401(c) 12a
Sec. 401(h) 12a
Sec. 501(a) 4, 12a
Sec. 501(b) 4, 7, 12a
Sec. 609 .....17, 12a

28 U.S.C. 1254(1) 2

LEGISLATIVE MATERIAL:

Hearings on Bills to Amend and Repeal the NLRA, 80th Cong., 1st Sess., 1947 11
Hearings before Subcommittee on Labor of Committee on Labor and Public Welfare, U.S. Senate, 85th Cong., 2d Sess., on Union Financial and Administrative Practices and Procedures, 1958 .....11, 12
H. Rep. No. 741, 86th Cong., 1st Sess., pp. 2, 5, 7, reprinted 1 Leg. His. LMRDA 760, 763, 765 9
H. Rep. No. 1147, 86th Cong., 1st Sess., p. 31, reprinted 1 Leg. His. LMRDA 935 12
Leg. His. LMRDA, Vol. II, pp. 1115, 1116, 1295, 1433, 1573, 1667, 1668 .....12, 13, 14
S. Rep. No. 187, 86th Cong., 1st Sess., pp. 2, 5-7, 25, reprinted 1 Leg. His. LMRDA 398, 401-403, 419 9
S. 1137, 86th Cong., 1st Sess., as referred, reprinted 1 Leg. His. LMRDA 298 12
S. Rep. No. 1417, 85th Cong., 2d Sess., Interim Report of the Select Committee on Improper Activities in the Labor Management Field, p. 452 .....9, 13

MISCELLANEOUS:

American Civil Liberties Union, Democracy in Trade Unions, November, 1943 .....10, 11
American Civil Liberties Union, Democracy in Trade Unions—Supplement with desirable provisions from trade-union by-laws, November, 1943 11

Page

American Civil Liberties Union, Democracy in Trade Unions, June, 1952 ..... 11, 15
American Civil Liberties Union, A Labor Union "Bill of Rights" Democracy in Trade Unions, the Kennedy-Ives Bill, September, 1958 11
Note: The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts, 62 Colum. L. Rev. 1018 (1962) 22, 23
Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. L. Rev. 199 (December 1960) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, No. 550, TWU, AFL-CIO, a labor organization, ROWLAND K. QUINN, JR., JANETTE HEISLER, HELEN CHASE, NANCY COLLINS, BARBARA ROADS, IRVING ROSEN, AND BEVERLY NELSON, individually and on behalf of all members of the AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO, *Petitioners,*

v.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, MICHAEL J. QUILL, MATTHEW GUINAN, JAMES F. HORST, FREDRIC A. SIMPSON, CHARLES NELSON, AND MICHAEL F. CICCIA, individually and on behalf of all members of a certain class.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO, a labor organization, Rowland K. Quinn, Jr., Janette Heisler, Helen Chase, Nancy Collins, Barbara Roads, Irving Rosen and

Beverly Nelson, individually and on behalf of all members of the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on July 14, 1964 (Appendix A hereto, p. 1a, *infra*).

OPINIONS BELOW

The opinion of the Court of Appeals, printed in (Appendix B hereto, pp. 1a-8a, *infra*) is reported at 334 F. 2d 805. The United States District Court for the Northern District of Illinois, Eastern Division, did not issue any opinion. Its findings of fact (D.A. 317-353),[1] conclusions of law (D.A. 353-356), and preliminary injunction (D.A. 356-359) are not officially reported but are unofficially reported in 55 LRRM 2711.

JURISDICTION

The judgment of the Court of Appeals was entered on July 14, 1964 (Appendix A, p. 1a, *infra*). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1). A petition for rehearing duly filed was denied on August 21, 1964.

QUESTIONS PRESENTED

1. Whether removal of a union member from the office of president of a local without a fair hearing constitutes discipline of the member within the meaning of Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 411(a)(5).

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[1] D.A. denotes the "Appendix of Defendants-Appellants" printed for the Court of Appeals. P.A. denotes the "Appendix of the Plaintiffs-Appellees." Nine copies of each appendix have been supplied for use in this Court.

2. Whether in a suit in which the federal district court had jurisdiction under Sections 302 and 304 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 462 and 464, to remedy an unlawful trusteeship, the court of appeals properly held that the formal termination of the trusteeship while the case was on appeal rendered the case moot and terminated the jurisdiction of the federal courts to restore the president of the local to office, and enjoin further interference by the international, despite the undisturbed findings of fact by the district court that the unlawful removal by the international of the president of the local was an integral part of the unlawful imposition of the trusteeship which would impose continuing irreparable injury unless he was restored to office.

3. Whether protection of the right to vote for union officers accorded members by Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 411(a)(1), includes the right of members of a local to have their votes given effect by restoring to the office of president of a local the duly elected president thereof who was unlawfully removed by the international as soon as the votes were counted.

4. Whether a federal district court, having jurisdiction under Sections 302 and 304 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 462 and 464, of a claim that the international has unlawfully imposed a trusteeship on a local, also has jurisdiction of a state cause of action for the arbitrary removal by the international of the president of the local where the district court finds that the evidence introduced on the issue of the ille-

gality of the trusteeship also establishes the illegality under state law of the removal of the president.

STATUTES INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. Supp. 401 *et seq.*, are set forth in Appendix C, pp. 8a-14a, *infra.*

STATEMENT

The instant case was begun in the United States District Court for the Northern District of Illinois, Eastern Division, by the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL CIO, hereinafter called ALSSA, Rowland K. Quinn, Jr., the duly elected president of ALSSA, and various other officers and members, suing in certain counts of the complaint on behalf of themselves and in other counts on behalf of all other members of ALSSA (D.A. 1-35). The defendants were the Transport Workers Union of America, hereinafter called TWU, and various of its officers (D.A. 5), also sued in some counts as representatives of the class composed of TWU members who are not also members of ALSSA (D.A. 23).

The complaint alleged that TWU had placed ALSSA in trusteeship in violation of the TWU constitution and in violation of Sections 302, 304 and 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 462, 464 and 501 (D.A. 6-10) and had removed Rowland K. Quinn, Jr., from the office of president of ALSSA without a fair hearing in violation of Section 101(a)(5) of said Act, 29 U.S.C.A. Supp. 411(a)(5) (D.A. 10-22). Jurisdiction of the federal district court was invoked under Sections 102, 304(a) and (b) and 501(b) of the Labor-Management

Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 412, 464(a) and (b) and 501(b) (D.A. 1-2).

Prior to the filing of an answer to the complaint the petitioners moved for a preliminary injunction and the district court conducted a five-day trial on the motion for preliminary injunction (D.A. 317).

The relevant facts as found by the district court and as shown by the evidence are as follows:

In an election conducted by a secret mail referendum among all the members of ALSSA in May and June, 1963, the results of which were certified on June 26, 1963, Rowland K. Quinn, Jr., a long time member of ALSSA, was elected president of ALSSA for a two year term beginning July 1, 1963 and terminating June 30, 1965 (D.A. 318, 330).

On June 27, 1963, the day following the certification of the results of the election, without any prior notice, charges or hearings, TWU imposed a trusteeship on ALSSA, and appointed Fredric A. Simpson as trustee with directions to take possession and control of all of the property of ALSSA and to have the sole and exclusive authority to speak and act for ALSSA and to administer its affairs (D.A. 330; P.A. 31, 33, 228-229, 241, 242, 263-264, D.A. 206-207). At all times after June 27, 1963, TWU treated the charter, constitution and by-laws of ALSSA as suspended and refused to permit any officer or committee of ALSSA to function without the consent and approval of Fredric A. Simpson as trustee of ALSSA (D.A. 330-331; P.A. 29-30, 48-49, 117, 183-184). At no time either before or after June 27, 1963, did TWU or any of its officers, committees or agents, give any hearing to ALSSA with respect to the propriety of the trusteeship (D.A. 331; P.A. 31-32, D.A. 203).

The president of TWU, Michael J. Quill, served charges dated July 10, 1963, on Rowland K. Quinn, Jr., alleging that in various respects he had failed to carry out his obligations as president of ALSSA (D.A. 332-333; P.A. 248-252). Said charges did not specify any section of any constitution as having been violated but did set forth certain respects in which it was alleged that Quinn had conducted the affairs of ALSSA in a manner detrimental to the interests of ALSSA and of TWU (D.A. 332-333; P.A. 248-252).

On July 17, 1963, the duly elected Executive Board of ALSSA, at a duly constituted meeting with a quorum present, unanimously adopted a resolution denouncing the purported trusteeship as a violation of the autonomy of ALSSA and authorized the hiring of the law firm of Leibik and Weyand to resist the illegal and wrongful trusteeship and removal of duly elected and qualified officers (D.A. 331-332; P.A. 29-30, 109, 176-177, 245-247). Said resolution has never been reconsidered or overriden or withdrawn by said Executive Board (D.A. 331-332; P.A. 184).

A hearing on the charges against Quinn was held by the International Executive Council of TWU on July 30 and 31, 1963 (D.A. 332-333). The hearing was unfair because it was conducted before a biased and partial body, counsel for TWU was present and active in the prosecution of Quinn although his lawyers were excluded, the hearing was conducted in an unfair manner, evidence was introduced against Quinn which he was not permitted to answer and there was no evidence to support the charges (D.A. 333-343, 354-355).

On August 1, 1963, the International Executive Council of TWU found the charges against Quinn had

been sustained and voted to remove him from the office of president of ALSSA (D.A. 345-346).

The reasons assigned by TWU for the imposition of the trusteeship and the removal of Quinn were mere pretexts (D.A. 346, 351-352). The real reason for the imposition of the trusteeship and the removal of Quinn was TWU's desire to secure full control of the income of ALSSA (D.A. 346, 352).

ALSSA, all its members and Quinn will suffer irreparable injury unless the trusteeship is terminated and Quinn is restored to office pendente lite (D.A. 352, 356).

The district court concluded that it had jurisdiction of the case under Sections 102, 304(a) and (b) and 501(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 412, 464(a) and (b) and 501(b), that the trusteeship violated Sections 302 and 304 of the Act, that each of the other members of ALSSA had been deprived of his equal right to have the candidate for which he voted serve when elected, that the removal of Quinn was an integral part of the imposition of the trusteeship, and that the removal of the trusteeship requires the restoration of Quinn to the office of president of ALSSA (D.A. 353-355).

The district court further determined that under the doctrine of pendent jurisdiction it had jurisdiction to restore Quinn to office since the issues with respect to the trusteeship and removal involved the same transactions and evidence, and Quinn's removal was improper under the applicable state law (D.A. 355-356).

The preliminary injunction order restored the status quo pendente lite by restoring Quinn to office and en-

joining the continuance of the trusteeship, any interference with Quinn in his performance of duties as president of ALSSA and any interference by TWU with the management and functioning of ALSSA (D.A. 356-357).

While an appeal from the preliminary injunction was pending in the court of appeals, TWU adopted a resolution terminating the trusteeship effective February 1, 1964, which was brought to the attention of the court below on motion of TWU to dismiss for mootness. Although petitioners filed several motions in the court of appeals for leave to present evidence showing the trusteeship was not moot supported by affidavits showing that the trusteeship was not terminated in fact as Simpson continued at all times after February 1, 1964, to file papers in the Illinois courts signed by him as trustee and TWU continued through Simpson or other officers of TWU to control the affairs of ALSSA, the court of appeals ruled that the trusteeship issue was moot (pp. 4a-5a, *infra*). The court of appeals also ruled that the federal courts had no jurisdiction to restore Quinn to office since the word member in Section 101(a)(5) did not include an officer (pp. 6a-7a, *infra*) and pendent jurisdiction was inapplicable as removal of an officer was a different cause of action from imposition of a trusteeship (pp. 7a-8a, *infra*). The court of appeals accordingly reversed the preliminary injunction (p. 8a, *infra*).

REASONS FOR GRANTING THE WRIT

1. This Court should review a construction of the Labor-Management Reporting and Disclosure Act which excludes arbitrary removal of a union officer from its provisions.

One of the primary purposes of Congress in adopting the Labor-Management Reporting and Disclosure Act of 1959 was to insure democracy within unions.[2] To construe, as the court below has done, the provisions of the statute as affording no protection against removal of a union officer without a fair hearing, obviously leaves a wide gap within which democracy in a union may be destroyed. For democracy in unions can never be assured by protecting members in their right to be members and vote, if as soon as they elect officers, such officers may be arbitrarily removed. Honesty and responsible leadership in unions will continue easily to be destroyed unless the leaders are protected against arbitrary removal. Members without leaders cannot do much.

The language of the statute read literally as applied to the facts of the instant case requires a different result. Section 101(a)(5), insofar as here material, provides:

> "No member of any labor organization may be * * * * disciplined * * * * unless such member has been * * * * (c) afforded a full and fair hearing."

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[2] S. Rep. No. 1417, 85th Cong., 2d Sess., Interim Report of the Select Committe on Improper Activities in the Labor Management Field, p. 452; S. Rep. No. 187, 86th Cong., 1st Sess., pp. 2, 5-7, 23, reprinted 1 Leg. His. LMRDA 398, 401-403, 419; H. Rep. No. 741, 86th Cong., 1st Sess., pp. 2, 5, 7, reprinted 1 Leg. His. LMRDA 760, 763, 765.

Rowland K. Quinn, Jr. was a member of a labor organization (D.A. 318). His removal from the office of president certainly constituted discipline by all generally accepted meanings of the word discipline (D.A. 354). He was not afforded a full and fair hearing (D.A. 333-343, 354, 355).

The language of the statute being clear and the plain meaning fully consistent with the purpose of the statute as manifested by its other provisions, there is no need to resort to legislative history to ascertain Congressional intent. However, if resort is had to the legislative history, there is extensive evidence that Congress was equally as concerned with insuring due process in the removal of an officer as in other penalization of members. The Bill of Rights provisions of the Labor-Management Reporting and Disclosure Act, including Section 101(a)(5), had its origins in proposals of the American Civil Liberties Union to assure democracy in trade unions.[3] From 1941 to 1943 this organization's Committee on Trade Union Democracy conducted hearings and in 1943 issued its report, in which it stated:[4]

> "Problems involving civil rights become very acute at those points where the trade union seeks to discipline individual members, officers, minority groups or local affiliates."

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[3] Stuart Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. Law Rev. 199, 201 (December, 1960).

[4] American Civil Liberties Union, Democracy in Trade Unions, November, 1943, p. 27.

This report,[5] a supplement,[6] and revised versions[7] issued over the following years, contain discussions of instances of abuse by unions in the discipline of officers as well as collect constitutional provisions of unions expressly applicable to the discipline of officers. The draft of proposed legislation presented to Congress by representatives of the American Civil Liberties Union in 1958 so far as here material, provided:[8]

"Section II. Freedom of Election and Balloting

* * *

"1. * * *

* * *

"c. * * * No elected officer shall be removed from office except after reasonable notice and a fair hearing on the charges.

* * *

"Section VI. Due Process Within Unions

* * *

"2. No labor organization shall fine, suspend, expel, penalize or otherwise discipline any mem-

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[5] *Id.*, pp. 31, 36, 38.

[6] American Civil Liberties Union, Democracy in Trade Unions—Supplement with desirable provisions from trade-union by-laws, November, 1943, pp. 1, 4.

[7] American Civil Liberties Union, Democracy in Trade Unions, June, 1952, p. 9; American Civil Liberties Union, A Labor Union "Bill of Rights" Democracy in Trade Unions, the Kennedy-Ives Bill, September, 1958, pp. 5, 15, 16.

[8] Hearings before Subcommittee on Labor of Committee on Labor and Public Welfare, U.S. Senate, 85th Cong., 2d Sess., on Union Financial and Administrative Practices and Procedures, 1958, pp. 1118-1119. Earlier legislative proposals made no express reference in this connection to officers but used either the term "member" or "person." American Civil Liberties Union, Democracy in Trade Unions, November, 1943, p. 79; Hearings on Bills to Amend and Repeal the NLRA, 80th Cong., 1st Sess., 1947, p. 3635.

ber for any wrongful act without a fair hearing at which these due process protections are guaranteed: * * *

"3. Charges under the procedure described in 2 may be brought by union officials against members or by members against union officials."

In the hearings before the McClellan Committee[9] instances of removal of officers without a fair hearing appeared and the bill introduced by Senator McClellan expressly provided that an elected officer of a union could only be removed after notice and hearing.[10]

During the debates preceding enactment of the Labor-Management Reporting and Disclosure Act, supporters of the proposed bill of rights amendment referred to the need to protect union officers from removal from office without due process.[11] Opponents attacked Section 101(a)(5) on the ground it prohibited suspension of a local union officer for corruption without affording a hearing prior to suspension.[12] Their objection was based on the ground that while the procedures were going on the union officer might "be looting the union's treasury, or violating any number of

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[9] S. Rep. No. 1417, 85th Cong., 2d Sess., Interim Report of the Select Committee on Improper Activities in the Labor Management Field Pursuant to S. Res. 74 and 221, 85th Cong., pp. 126-127, 131; Hearings before Subcommittee on Labor and Public Welfare, U.S. Senate, 85th Cong., 2d Sess., on Union Financial and Administrative Practices and Procedures, 1958, pp. 521-523, 584, 676, 684.

[10] Section 302(a)(9) of S. 1137, 86th Cong., 1st Sess., as referred, reprinted in 1 Leg. His. LMRDA 298.

[11] 2 Leg. His. LMRDA, p. 1115, col. 1, p. 1116, col. 3, p. 1105, col. 1.

[12] *Id.*, p. 1573, col. 2.

its laws, or leading to open rebellion.'"[13] No Senator or Congressman took the view that an officer should not be assured due process before his removal became final—the only contention was that suspension prior to charges and hearing should be permitted.[14]

The sole bit of legislative history to support the view that the word member in Section 101(a)(5) does not include officers and hence nothing therein protects an officer from removal without due process is a statement to this effect by Senator Kennedy,[15] which was relied upon by the court below (p. 7a, *infra*). In his statement Senator Kennedy purported to be stating the position of the Conference Committee. We read the Conference Report differently. We believe the Conference Committee distinguished between removal and suspension. It stated:[16]

> "In paragraph (5), relating to safeguards against improper disciplinary action, it should be noted that the prohibition on suspension without observing certain safeguards applied only to suspension of membership in the union; it does not refer to suspension of a member's status as an officer of the union."

We read this statement as meaning that because the word suspend is limited by the word member the language "no member * * * may be * * * suspended" makes the suspension referred to mean only a suspension from membership. This reading follows the view

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[13] *Ibid.*

[14] *Id.*, p. 1573, cols. 2, 3, p. 1667, col. 3, p. 1668, col. 1.

[15] *Id.*, p. 1433, col. 1.

[16] H. Rept. No. 1147, 86th Cong., 1st Sess., p. 31, reprinted 1 Leg. His. LMRDA 935.

expressed by Senator McClellan in the debates that suspension pending a hearing is not discipline.[17] Since removal of a member from office is clearly discipline of a member, such a construction permits suspension pending a future hearing without a preceding hearing while requiring notice, charges and hearing preceding removal from office. We accordingly submit that Senator Kennedy misread the Conference Report when he stated that the conferees agreed this provision does not relate to "removal" from union office.[18]

The long, arduous struggle to promote democracy in unions by protecting honest leaders from arbitrary removal from office should not be nullified by this one mistaken reading of the Conference Report.

The well rounded scheme of protecting democracy in unions which appears on the face of the Labor Management Reporting and Disclosure Act becomes distorted by the construction of Section 101(a)(5) as not applicable to the removal of an officer. Either member or discipline in this section has a different meaning from the same word in all other provisions of the statute or the other provisions must be given a construction which neither the plain language nor the legislative history supports. See discussion and quotation from *King* v. *Grand Lodge, I.A.M., infra*, pp. 16-19.

But if Section 101(a)(5) is not applicable, it must be held that members of the union other than the removed officer are protected in the right to have him restored to office, either because his removal deprived them of their votes or constituted an unlawful trusteeship.

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[17] 2 Leg. His. LMRDA, p. 1295, col. 1.

[18] *Id.*, p. 1433, col. 1.

When the argument was first made that Section 101 (a)(5) did not embrace officers, the district court at once pointed out that the right of the members of ALSSA other than Quinn were protected by Section 101(a)(1) in their right to vote for Quinn, a right which would be meaningless if the day after their votes were counted, TWU could arbitrarily remove Quinn from office (P.A. 9-10, 16-17). The district court accordingly, as an alternative finding which by itself fully supports the preliminary injunction order restoring Quinn to office pendente lite, determined that the six union members other than Quinn who were plaintiffs "and each of the other members of ALSSA has been, by the action of the TWU in removing Rowland K. Quinn, Jr., from the office of president of ALSSA, deprived of his equal right to have candidates for which he voted serve when so elected" (D.A. 355). Since Section 102 confers jurisdiction on the federal district courts to enforce this right, the preliminary injunction issued was within the jurisdiction of the district court. The court of appeals ignored this basis for jurisdiction in reversing. The petition for rehearing (pp. 7-9) reminded the court of appeals of this basis for the order.

The American Civil Liberties Union in its reports leading to the adoption of this legislation took the position that the protection of the ballot included protection of the elected official from arbitrary removal. It stated:[19]

> "The third essential protection of the election process is that qualified persons elected to positions by the membership be allowed to serve. If a

[19] American Civil Liberties Union, Democracy in Labor Unions, June, 1952, p. 9.

> local union officer is arbitrarily removed by the international officers, * * * it is not merely the officer * * * who is injured. The whole local membership has been deprived of their ballot.
>
> * * *
>
> "The right of an individual within his union includes the right to express through his ballot his choice as to union policies and union leadership. He is entitled to a vote free from fear, honestly counted and diligently followed."

Likewise the district court, in the circumstances of this case, very properly viewed the removal of Quinn as an integral part of the trusteeship and his restoration to office as essential to remedy the unlawful imposition of the trusteeship (D.A. 355).

We regard these latter two bases for the preliminary injunction as sound, and present them as questions. If Section 101(a)(5) is not construed as embracing officers, we urge that this Court should clarify the extent to which other provisions of the statute apply.

2. The construction of the word member in Section 101(a)(5) as not including an officer conflicts with the holding of the Ninth Circuit in Grand Lodge, I.A.M. v. King, petition for certiorari pending, No. 456, this term.

The only other court of appeals to consider whether Section 101(a)(5) applies to the removal from office of a member of a union is the Court of Appeals for the Ninth Circuit in *Grand Lodge, I.A.M.* v. *King,* petition for certiorari pending, No. 456, this term. There the district court, like the district court in the instant case, held Section 101(a)(5) applicable to removal of a union officer. *King* v. *Grand Lodge, I.A.M.,* N.D. Calif. S.D. 1963, 215 F. Supp. 351, 354. The Ninth Circuit affirmed the ruling of the district court that the

complaint stated a good cause of action but based its decision on different grounds. Contrary to the decision of the court of appeals in the instant case, the Ninth Circuit held that member in Section 101(a)(5) included an officer. However, it held no violation of Section 101(a)(5) was present because removal from office did not constitute discipline within the meaning of this section. Nevertheless it sustained the complaint as stating a cause of action because removal of an officer did constitute discipline within the meaning of Section 609, a catch all section making it unlawful for a union "to fine, suspend, expel or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act." The facts alleged in that case showed that the removal resulted from the exercise by the plaintiffs of political rights and freedom of speech and assembly guaranteed to members by Section 101(a)(1) and (2). In holding that the word member throughout the statute included officers the Ninth Circuit stated (56 LRRM 2639, 2641):

> "* * * sections 101(a)(1) and (2) apply in terms to 'every member,' and nothing in the statutory language excludes members who are officers.[11] Nor is there any intimation in the legislative history that Congress intended these guarantees of equal political rights and freedom of speech and assem-

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"[11] This is also true of other sections of Title I. Our conclusion that § 101(a)(5) is inapplicable to the present case is based upon the conclusion that one removed from office is not 'otherwise disciplined' within the meaning of § 101(a)(5), rather than upon a reading of the word 'member' in that section as excluding officers. See note 8.

bly to be inapplicable to officer-members.[12] The general purpose of the Act argues to the contrary. The guarantees of sections 101(a)(1) and (2) were adopted to strengthen internal union democracy.[13] To exclude officer-members from their

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"[12] Defendants call attention to the fact that as § 101 (a)(4) originally passed the Senate it applied to 'members or officers,' and the words 'or officers' were deleted in conference. S. 1555, 86th Cong., 1st Sess. § 101(a)(4)(1959), 1 Leg. His. LMRDA 520; H.R. 8490, 86th Cong., 1st Sess. § 101 (a) (4) (1959), 1 Leg. His. LMRDA 877. Defendants argue that this change evidences a congressional understanding that union officers were excluded from the whole of Title I. See Judge Kalodner's opinion in *Sheridan* v. *United Bhd. of Carpenters & Joiners*, 306 F. 2d 152, 156-57, 50 LRRM 2637 (3rd Cir., 1962).

"The language change in § 101(a)(4) was made without comment of any sort. Prior to the change, it was assumed in Senate debate that officers-members were included in § 101(a)(4) (see remarks of Senator Mundt at 105 Cong. Rec. 6478 (1959), 2 Leg. His. LMRDA 1105). Thus defendants' argument requires the inference that the Conference Committee drastically narrowed the assumed coverage of § 101(a)(4) with no explanation whatever. A more reasonable conclusion is that the Conference Committee recognized that the deleted words 'or officers' were surplusage since as a practical matter union officers were also union members, and therefore deleted these words to conform § 101(a)(4) in style with other sections of Title I which used only the inclusive word 'members.'

"[13] See, e.g., Murphy, The Background of the Bill of Rights and Its Provisions, Symposium on the Labor-Management Reporting and Disclosure Act of 1959, 277-78 (Slovenko ed. 1961); Summers, The Law of Union Discipline: What the Courts do in Fact, 70 Yale L.J. 175 (1960); Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851, 855-57 (1960); Cox Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195, 201 (1960); Summers, The Impact of Landrum-Griffin in State Courts, 13th Annual Conference on Labor 333, 335 (1960).

coverage would deny protection to those best equipped to keep union government vigorously and effectively democratic. We therefore conclude that sections 101(a)(1) and (2) apply to officer-members such as plaintiffs.[14]

"[14]. The Second Circuit held § 101(a)(2) applicable to an officer-member in *Salzhandler* v. *Caputo*, 316 F. 2d 445, 52 LRRM 2908 (2d Cir., 1963); Comments 77 Harv. L. Rev. 770 (1964), and 73 Yale L. J. 426 (1964). Cf. Judge Kalodner's opinion in *Sheridan* v. *United Bhd. of Carpenters & Joiners*, 306 F. 2d 152, 156, 50 LRRM 2637 (3d Cir. 1962)."

The word member in Section 101(a)(1) and (2) was construed to include officers by the Second Circuit in *Salzhandler* v. *Caputo*, 316 F. 2d 445, 449-451. The word member in Section 101(a)(4) was construed to include officers by Judge McLaughlin dissenting in *Sheridan* v. *Brotherhood of Carpenters*, 3d Cir., 1962, 306 F. 2d 152, 165-167, where Judge Kalodner disagreed and where Judge Hastie did not reach this question.

These seeming conflicts with respect to an important issue require resolution by this Court.

3. The pendent jurisdiction issue presented typifies a state of uncertainty and confusion among the circuits which should be clarified by the Court.

As an alternative ground of jurisdiction over the claim of Quinn for restoration to his position as president of ALSSA, the district court held the doctrine of pendent jurisdiction applicable. Its determination in this regard was stated as follows (D.A. 365-366):

"The issues with respect to the removal of Rowland K. Quinn, Jr., from the office of president of ALSSA involve the same transaction and evidence as is involved in the issues with respect to the

> trusteeship and therefore under the doctrine of pendent jurisdiction this court has jurisdiction to determine and does determine that Rowland K. Quinn, Jr., under the applicable laws of the States of Illinois and New York was improperly and unlawfully removed from the office of president of ALSSA and is entitled to be restored to such office."

The court of appeals held that the doctrine of pendent jurisdiction was inapplicable because of the absence of the single cause of action or wrong requisite under this Court's decision in *Hurn* v. *Oursler,* 289 U.S. 238 (1933). The court of appeals stated (p. 8a, *infra*):

> "The facts supporting a suit for restraint of a trusteeship and one for reinstatement of a union official are not substantially the same because they do not constitute a single wrong."

This construction of *Hurn* v. *Oursler* is contrary in principle to the construction adopted by the First, Second, Third, Fourth, Sixth and Ninth Circuits.[20]

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[20] *Mansoky* v. *Bethlehem-Hingman Shipyard, Inc.*, 1st Cir., 1949, 177 F. 2d 529, 534, holding recovery of incentive payments under state contract law pendent to overtime claim under Fair Labor Standards Act; *Strachman* v. *Palmer,* 1st Cir., 1949, 177 F. 2d 427, 429-430, holding that although the Interstate Commerce Act on which federal jurisdiction rested, did not apply to shipments to Canada, the district court should have accepted pendent jurisidiction over state claim for negligent damage to goods while in transit to Canada; *Hazel Bishop, Inc.* v. *Perfumme, Inc.,* 2d Cir., 1963 314 F. 2d 399, affirming an injunction against breach of contract although reversing as to trade mark infringement and unfair competition, the latter two affording the only basis for federal jurisdiction; *Cromwell* v. *Hillsborough Township,* 3rd Cir., 1945, 149 F. 2d 617, 620, affirming a judgment finding that a New Jersey tax assessment was invalid for failure to follow New Jersey statutory procedures, though federal jurisdiction was based on a claim

In these other courts the doctrine of pendent jurisdiction is used to preserve judicial economy and prevent parties from having to repeat the same evidence and the same witnesses in both federal and state courts. The test is not whether the state and federal law provide the same or related legal remedies but whether the evidence necessary for the federal cause of action would need to be reintroduced in whole or substantial part in the state courts if the federal courts declined to pass on the state cause of action.

In the instant case the court below conducted a trial for five days, the transcript of which is 1690 pages long, heard seventeen witnesses (D.A. 317), and received in evidence more than eighty exhibits. All of this evidence was equally applicable to both the legality of the trusteeship and to the legality of the removal of Quinn from office. To now require that in order to obtain a state remedy the plaintiffs must repeat this trial in the state courts renders our Federal state sys-

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of federal unconstitutionality which the court did not reach; *Rumbaugh* v. *Winefrede R.R. Co.*, 4th Cir., 1964, 331 F. 2d 530, 539-540, holding state claims for damages for wrongful discharge and conspiracy pendent to claim for unfair representation based on *Steele* doctrine; a series of cases in the Sixth Circuit resting on a claim of secondary boycott under Section 303 of the Taft-Hartley Act, 29 U.S.C. 187, where recovery for state tort claims of violence to property was granted: *White Oak Coal Co.* v. *U.M.W.A.*, 318 F. 2d 591, 593, 600, certiorari denied, 375 U.S. 966; *Gilchrist* v. *U.M.W.A.*, 290 F. 2d 36, 39, certiorari denied, 368 U.S. 875; *Flame Coal Co.* v. *U.M.W.A.*, 303 F. 2d 39, 42, 43, certiorari denied, 371 U.S. 891; *U.M.W.A.* v. *Osborne Mining Co.*, 279 F. 2d 716, 724, certiorari denied, 364 U.S. 881; *U.M.W.A.* v. *Meadowbrook Coal Co.*, 263 F. 2d 52, 59, certiorari denied 359 U.S. 1013; *Addison* v. *Grand Lodge*, 9th Cir., 1963, 318 F. 2d 504, holding claims that union discipline violated state law pendent to claimed violation of Section 101(a)(1) (2) and (5) of the Labor-Management Reporting and Disclosure Act.

tem a method of doubling legal costs, and duplicating the work of attorneys and judges.

While some of these cases, in addition to emphasizing the fact that the same proof supports both federal and non-federal claims, suggest a relation between the injuries involved, the relationship present is always described in broad terms such as dynamiting property and secondary boycott both are injuries to the business. On such a basis, the imposition of the trusteeship and the removal from office are related because they both constitute interference by the international with the right of members of the local to run their own union through their own officers. In both instances the international displaces local officers. That the relationship between the state and federal claims, aside from common evidence, should not be relevant is made clear by an excellent note analyzing the cases. Note: The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts, 62 Colum. L. Rev. 1018 (1962). This note believes that reliance on the phrases used in *Hurn* is misleading (62 Column. L. Rev. at 1039, n. 66):

> "It would no doubt foster an intelligent approach to the doctrine if federal courts would henceforth explicitly recognize that it is the similarity of facts or proof that determines the requisite nexus between a substantial federal question and a pendent non-federal claim and that the 'single cause of action' terminology is little more than deceptive surplusage."

The note states the proper criteria as follows (62 Colum. L. Rev. at 1044-1045):

> "* * * the exercise of pendent jurisdiction must be judged by whether it furthers some federal policy. Measured by that test pendent jurisdic-

> tion serves two purposes. First, it ensures that litigants will not be dissuaded from maintaining their federal rights in a federal court solely because they can dispose of all claims by one litigation in the state but not in the federal forum.[145] When jurisdiction over the federal claim is exclusive in the federal judiciary, only pendent jurisdiction makes possible a complete remedy for vindication of the plaintiff's rights. Second, assuming that the litigants are in a federal forum, pendent jurisdiction serves the interest of avoiding piece-meal litigation, thus promoting judicial economy and greater expedition for the litigants.
>
> "[145]. Surely, the primary function of the federal judiciary is to provide a forum for the vindication of federal rights. * * * obstacles to joinder of related claims should not be permitted to restrain the parties' freedom to choose a federal forum."

This note collects the pertinent authorities and shows that there is an uncertainty among the courts which needs to be put at rest by clarification by this Court. The instant case is one which establishes the need for such clarification. It arises in a field where the problem of pendent jurisdiction will constantly recur. Almost all cases arising under the Labor-Management Reporting and Disclosure Act will involve facts and evidence also establishing state causes of action. In the instant case there can be no doubt but what the failure of TWU to accord Quinn a fair hearing (D.A. 333-335, 354-355) made his removal improper under both Illinois and New York law. Where as here (Article V, Section 5, of TWU Constitution, Plffs. Exh. 4, p. 10), the constitution of the organization requires a hearing, the Illinois courts construe the constitution as requiring a fair hearing. *O'Brien* v. *Matual,* 14 Ill. App. 2d 173, 144 N.E. 2d 446, 458; *Werner* v. *I.A.M.,* 11 Ill. App. 2d 258, 137 N.E. 2d 100, 111-112; *Ryan* v. *Cudahy,* 15 Ill. 108, 41 N.E. 760, 764.

The New York courts hold that a union may not remove an officer without a fair hearing. *De Stefano* v. *Papa,* 37 N.Y.S. 2d 950, 951, App. dismd. 265 App. Div. 919, 39 N.Y.S. 2d 413, reh. den. 265 App. Div. 991, 39 N.Y.S. 2d 987.

If in this case Quinn must start over again in the Illinois or New York courts, it will be apparent that use of the Labor-Management Reporting and Disclosure Act requires cumbersome and costly duplication of evidence in federal and state proceedings. Review by this Court is essential to define the proper scope of pendent jurisdiction.

CONCLUSION

The Labor-Management Reporting and Disclosure Act of 1959, has introduced into federal law a new and uncharted field of operations. The statute is detailed and complicated. Its proper construction is of great public importance. Here the facts found by the trial court disclose just the sort of violations of union democracy which the legislative history shows the statute was designed to correct. The decision by the court below that the district court was without jurisdiction to remedy these under either federal or state law calls for review and correction by this Court.

Respectfully submitted,

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